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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/064,989  | 09/06/2002  | William G. Seldon    | 71443-0004          | 1838             |
| 20915   | 7590        | 09/01/2005           | EXAMINER            |                  |
| MCGARRY BAIR PC<br>171 MONROE AVENUE, N.W.<br>SUITE 600<br>GRAND RAPIDS, MI 49503 |             |                      | NGUYEN, CHI Q       |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3635                |                  |

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/064,989 | <b>Applicant(s)</b><br>SELDON, WILLIAM G. |  |
|                              | <b>Examiner</b><br>Chi Q. Nguyen     | <b>Art Unit</b><br>3635                   |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 16-21 and 39-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 39-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 September 2002 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This Office action is in response to the Applicant's amendment filed on 5/13/2005.

Upon further consideration, the previously stated allowable subject matters are being withdrawn and new ground of rejections are presented as following:

#### ***Claim Objections***

Claims 6 and 41 are objected to because of the claimed language is inconsistent. In regard claim 6, which depending upon claim 1 is set forth a subcombination of a simulated exposed roof rafter end and not positively claimed a combination with a building structures. However, the claim 6 is positively claimed in combination with the building structures, soffit, etc. At the present, the claims are being treated as a subcombination of a simulated exposed roof rafter end. The similar issue occurs in claim 41.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Sanchez (US 4,866,901).

In regard claims 1, 2, and 39, Sanchez discloses the claimed invention a roof rafter end comprising a sleeve portion 16 and a mounting portion 12, a distal end 19

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with an architectural design (figure 2); wherein the mounting portion 12 is functioned as a frame of a house.

In regard claims 3, 4, Sanchez teaches the claimed invention as stated, wherein the mounting portion 16 is a block of wood (column 2, lines 33-35); and the block of wood becomes a rafter end when the mounting portion 16 being mounted onto 13.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 40, and 41, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanchez (US 4,866,901).

Sanchez discloses the claimed invention as stated above except for the sleeve portion comprises a top and bottom wall and a pair of spaced apart sidewalls. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sleeve portion having a top and bottom wall and a pair of spaced apart side walls, although the sleeve portion of Sanchez is circular in shape; however, the sleeve portion can obviously be changed based on the device or the shape of the mounting portion to be covered. A change in shape of a prior art device is a design consideration within the skill of the art.

***Response to Arguments***

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Applicant's arguments filed 5/13/2005 have been fully considered but they are not persuasive because the argued limitations are not being claimed (see above rejections).

In regard the applicant's argument that the examiner has provided no factual support for the assertion that it would have been obvious as a design consideration to modify the cylindrical shape to rectilinear shape having top and bottom walls and a pair of spaced apart sidewalls. As set forth above, Sanchez teaches the circular shape sleeve to cover the circular shaped frame or mounting portion otherwise the sleeve would not tightly fitted onto the mounting portion or frame. Therefore, changing shape of a device would have been considered as a matter of design choice.

***Allowable Subject Matter***

Claims 16-21, and 42-44 are allowed.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Knoeb, Simpson, Condon, Burkart, and Skulsky teach pergola end caps for roofing structures.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (571) 272-6842. The examiner's right fax number is (571) 273-6847.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairdirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

8/24/2005

  
CQN

  
**Carl D. Friedman**  
**Supervisory Patent Examiner**  
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